

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

GINA RING,

Plaintiff,

v.

GENERAL MILLS,

Defendant.

ORDER

11-cv-167-bbc

In this civil case for monetary relief, plaintiff Gina Ring alleges that she cut her hand while opening a can of soup sold by defendant General Mills. She contends that defendant's negligence caused her injuries. Plaintiff filed this case in the Circuit Court for Dane County on December 16, 2010, and served the complaint on defendant on February 2, 2011. On March 4, defendant filed a notice of removal with this court and sent notices of removal to plaintiff and the state court by United States mail. The state court entered the notice of removal on March 8, 2011.

Also on March 4, plaintiff filed a motion for default judgment in the state court against defendant. Dkt. #7-2. After removal, she filed a brief in support of the motion in this court, contending that default is still appropriate under state law. Dkt. #14. Defendant has filed an opposition brief to plaintiff's notice for default, contending that it should be

denied as premature. Dkt. #5. I agree with defendant and will deny plaintiff's motion for default.

Plaintiff's motion was premature under both Wisconsin and federal procedural rules. Under Wisconsin law, defendant had 45 days from the date the summons was served (February 2, 2011) to file a responsive pleading. Wis. Stat. § 801.09(2)(a)(3)(b) (defendant has 45 days to respond if any action in complaint is founded in tort). This gave defendant until March 21, 2011 to file an answer. (March 19 was a Saturday.) Under federal law, defendant had seven days after filing the notice of removal with the federal court to file an answer to the complaint. Fed. R. Civ. P. 81(c)(2)(c). This gave defendant until March 11, 2011. Defendant filed an answer on March 9, 2011. Under either rule, its answer was timely. Therefore, I am denying plaintiff's motion for default judgment.

ORDER

IT IS ORDERED that plaintiff Gina Ring's motion for default judgment, dkt. #7-2, is DENIED.

Entered this 9th day of May, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge